STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	**05/14/03**	Bill No:	**SB 548**
Subject:	**Kopp Act**	Author:	**Burton**
	Income Tax Appeals		
Board Position:		Related Bills:	**SB 445 (2001)**

BILL SUMMARY

This bill would:

1. Increase the Kopp Act reportable contributions to a Member of the Board of Equalization from $250 to $1,000, and
2. Require that a contribution to any Member of the Board aggregating $1,000 or more from a committee that has received a contribution aggregating $1,000 or more within the preceding 12 months from a corporation that is a party, participant, or agent to any Board hearing be included among contributions subject to Kopp Act provisions.
3. Authorize the Attorney General, with the approval of the executive officer of the Franchise Tax Board or the Director of Finance, to file an appeal for de novo review with the superior court of an income tax decision of the Board. The Attorney General could also independently file such an appeal.

Summary of Amendments

Since the previous analysis, the provisions for the appeal of Board decisions by the FTB have been added to the bill.

ANALYSIS

Current Law

As part of a comprehensive governmental ethics reform measure, Senate Bill 1738 (Chapter 84, Statutes of 1990) enacted the Quentin L. Kopp Conflict of Interest Act of 1990 (Section 15626 of the Government Code). The Act requires that, prior to rendering any decision in any adjudicatory proceeding before the Board, each Member who knows or has reason to know that he or she received a contribution of $250 or more within the preceding 12 months from a party or participant, or his or her agent, shall disclose that fact on the record of the proceeding, as specified. Further, each Member is prohibited from participating in the decision or using his or her position to influence the decision if a contribution was made, as specified. The Act also provides that a party or a participant is required to disclose for the record if there has been a contribution to a Member of $250 or more in the preceding 12 months. The Act further requires that Board staff must inquire and report to the Board whether any such contributions have been made. Any person who knowingly or willfully violates any of those provisions is guilty of a misdemeanor. Currently, contributions by Political Action

Committees (PACs) are not subject to the contribution limits and disclosure requirements in the Act.

Proposed Law

This bill would amend Government Code Section 15626 to increase the Kopp Act reportable contributions to a Member of the Board of Equalization from $250 to $1,000. It would also amend Section 15626 to provide that contributions to any Board Member by a committee that has received a contribution aggregating $1,000 or more within the preceding 12 months *from a corporation* that is a party, participant, or agent would also be subject to the Kopp Act disclosure and disqualification provisions. For purposes of this provision, "committee" would have the same meaning as prescribed in Government Code Section 82013 and related regulations.

Background

Senator Burton introduced a similar measure in 2001 (SB 445). That bill would have required that a contribution to any Board Member aggregating $250 or more from a committee that has received a contribution aggregating $250 or more within the preceding 12 months from a corporation that is a party, participant, or agent to any Board hearing be included among contributions subject to Kopp Act provisions. Those provisions were amended out of the bill before it was sent to the Governor.

COMMENTS

1. **Sponsor and Purpose.** This provision is sponsored by the author in order to subject contributions from PACs to the Kopp Act provisions. According to the author's office, this bill is intended to address concerns raised in an October 29, 2000 Orange County Register newspaper article that suggested that some companies' taxes were reduced as a result of Board decisions that may have been influenced by permissible contributions to Members. These companies were corporate members of the Taxpayers Political Action Committee (Tax PAC), and PAC contributions are currently not subject to the conflict of interest provisions. This bill would close a loophole in the Kopp Act by making contributions from certain PACs, as specified, subject to the Kopp Act disclosure provisions.
2. **Key Amendments.** As introduced on **February 20, 2003** by Senator Perata, this bill dealt with the Political Reform Act of 1974. The **April 8, 2003** amendments gutted the introduced version of the bill and amended the Kopp Act to increase the amount of disclosable contributions and require the reporting of contributions by corporations to PACs. The **April 10, 2003** amendments changed the author from Senator Perata to Senator Burton.
3. **This bill increases the amount of contributions subject to disclosure.** This bill increases from $250 to $1,000 the amount of disclosable contributions made by all parties and participants, and the increase is not exclusive to the new provisions that would require reporting of contributions made by corporations to PACs.

4. **This bill creates disqualifying contributions where there is no affiliation between the taxpayer appealing before the Board and the committee making the contribution to the Board Member**. Since corporate party, participate or agent contributions to **any** committee are subject to the disclosure and disqualification provisions of the bill, Board Members will find themselves disqualified from hearing tax matters where there is no affiliation between the committee making the contribution and the corporate taxpayer appealing before the Board.

5. **This bill creates administrative difficulties for Board staff and Board Members.** One position in the Board Proceedings Division is currently used to track, identify and timely disclose all contributions of $250 or more made to Board Members, and determine if any contributors are parties, participants, or agents to any Board Members. While it is not difficult to determine if a party, participant, or agent has contributed to a Board Member, it will be extremely difficult to determine if that party has contributed to a committee that has contributed to a Board Member.

   Merely reviewing existing campaign statements filed by committees and the Board Members will not provide the timely information that is needed to comply with the requirements of this bill because there is a significant delay between the making or receiving of a contribution and the filing deadlines for campaign statements.

   To address this situation, in addition to the already existing disclosure requirements, the author could consider amending the bill to require committees to report whether any contributions have been made to Board Members, including a list of contributing corporations, as soon as the contribution is made.

   However, if the bill is amended as suggested, it would still require additional Board staffing and extremely burdensome record-keeping and tracking responsibilities. Moreover, there will still be the potential for missed contributions because, as the bill is currently drafted, it is not necessary for the corporate contribution to the committee to be made prior to the committee contribution to the Board. Consequently, the campaign information provided to the Board by the committee will not include the name of the corporation if the contribution by the corporation to the committee is made after the contribution by the committee to the Board.

6. **Board staff envisions a potentially unworkable two-step process to comply.** In order to determine whether a Board Member received a contribution from a committee that had received a contribution from a party, participant, or agent, Board staff would be required to first ask all corporate parties, participants, and agents whether they had made any contributions within the preceding 12 months to any committee. In addition, the contributions would have to be aggregated with those of their respective agents to determine is they reached the $1,000 limit. For example, if a party made a contribution of $99 to a committee and the party's agent made a contribution of $950 to the same committee, the contribution disclosure threshold would be reached even though neither party made a contribution of $1,000 or more. Therefore, any corporation appearing before the Board would be required to disclose all campaign contributions they had made within the previous 12 months. This goes far beyond the current requirements for other campaign contributors and places an undue burden on corporations appearing before the Board. And even under the

current law, at present time, approximately 25% of all participants, parties, and agents fail to send in their contribution disclosure forms prior to a scheduled Board hearing.

The second step in the process would entail the Board staff contacting each identified committee to determine whether the committee made a contribution of $1,000 or more to a Board Member within the preceding 12 months. This bill puts no statutory obligation on committees to respond to the Board's request for this information and they may be unwilling to take the time to comply.

Another option for obtaining the committee information would be for Board Members to check their own contribution records. However, merely reviewing campaign statements filed by Board Members or the committees would not be sufficient because of the current lag time between the making or receiving of a contribution and the filing of the campaign statements. A new tracking system would have to be developed to provide continuous updating of contributions to Board Members.

7. **There is a potential for a lack of a quorum.** Board staff is concerned that there could be many instances where Board Members will choose to disqualify themselves from an adjudicatory proceeding because they will be uncertain whether the required contribution disclosure information has been obtained. Members may choose to disqualify themselves from a vote rather than risk having violated the Kopp Act and face the penalties and consequences. Additionally, since parties, participants, and agents cannot limit the amount of contributions made by committees, there will be more instances of disqualifying contributions. This bill, therefore, has the potential to reduce the ability of the Board to maintain the quorum that is necessary to hear and decide adjudicatory matters presented to the Board. Members could be forced to have to choose between not receiving any committee contributions and fulfilling their duties as Board Members.

8. **The timeframe for committee contributions set forth in the bill is unclear.** As written, it is unclear whether the "preceding 12 months" modifying committee contributions in subsections (b) and (c) is measured from the date of the Board meeting or from the date of the contribution from the corporation to the committee. If the period is not measured from the date of the Board meeting, then the disqualification period could be as long as 24 months. Clarification is required to determine the disqualification period.

9. **The intent of Subsection (j) is unclear.** Subdivision (j) of Section 15626 states:

   > (j) A person may not create a committee or use an existing committee for purposes of making a contribution that, if made directly, would otherwise violate this section.

   Currently, contributions from committees affiliated with a party, participant or agent are not subject to the Kopp Act. This new subdivision appears to be an attempt to address that situation but the language is too broad and vague to know what is exactly intended or how it would be enforced. This subdivision should be amended to clarify its purpose.

10. **Related legislation.** Previous legislative attempts to revise the Kopp Act provisions have been unsuccessful, although those measures were broader than this bill's provisions. Senate Bill 139 (Kopp, 1993), Senate Bill 1806 (Kopp, 1992), Senate Bill 80 (Kopp, 1991), and Senate Bill 438 (Kopp, 1989) were basically identical bills that would have required Board staff to inquire and report contributions made by affiliated corporations and state assesees. Those bills were vetoed by Governors Wilson (SB 139, SB 1806, and SB 80) and Deukmejian (SB 438).

Appeals Provisions

Revenue and Taxation Code Sections 19048, 19334, and 19346

Current Law

Under existing law, an income tax payer can appeal a decision of the FTB to the Board of Equalization. In general, taxpayers may appeal to the Board after FTB has taken the following actions:

- Denied a taxpayer's protest of a proposed deficiency assessment;
- Denied a refund or credit or loss carryover claimed by the taxpayer; or
- Disallowed interest on any refund claimed by the taxpayer.

The Board's determination on an appeal of an FTB action is final unless within 30 days of the determination, the FTB or taxpayer petitions for a redetermination hearing. In the event the redetermination hearing is granted, the Board's determination becomes final after 30 days from the time the Board issues its opinion.

If the taxpayer is not satisfied with the decision of the Board to sustain the FTB's action, the taxpayer must then pay the tax liability and file a claim for refund. Once the refund claim is denied, the taxpayer may file suit in superior court against the FTB for the recovery of the amount paid. The suit is a trial de novo, and not an appeal of the Board's decision. Under current law, the FTB itself has no authority to appeal a decision by the Board.

Proposed Law

This bill would amend Sections 19048, 19334, and 19346 of the Revenue and Taxation Code to allow the Executive Officer of the FTB or the Director of Finance to appeal a decision of the Board, as filed by the Attorney General.

COMMENTS

1. **Sponsor and Purpose.** This provision is sponsored by the author in order to provide the FTB with some of the same appeal rights as taxpayers. This bill would provide FTB with an independent review by the superior court comparable to a taxpayer's suit for refund.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

2. **Key amendments.** The **May 1, 2003** amendments added the appeals provisions to this bill. The **May 12, 2003** amendments deleted provisions that would have allowed the FTB and others to appeal sales and use tax decisions, and clarified who would have the authority to appeal BOE decision of income tax cases. The **May 14, 2003** amendments were purely technical.
3. **Board administered tax decisions cannot be appealed.** Under current law, a decision by the Board involving either a sales tax case, or a case involving one of the numerous special taxes, cannot be appealed by anyone but the taxpayer involved. This bill would give income tax cases preferential treatment in the judicial system.
4. **Opponent's argument.** According to the May 30, 2003 issue of the Caltaxletter published by the California Taxpayers' Association, in a letter to the Senate Appropriations Committee, Cal-Tax General Counsel Greg Turner urged "senators to reject the bill. 'It's the equivalent of a prosecutor getting to appeal a not guilty verdict,' Mr. Turner said in a May 29 letter. This bill 'would turn the administrative process on its head' and subject taxpayers to a Hobson's choice of financial ruin through endless litigation or unjust taxation.'"

COST ESTIMATE

This bill would result in significant General Fund costs related to the requirements that Board staff inquire about, and report on, contributions made by PACs. Raising the contribution reporting limit would not decrease the workload because the contribution disclosure forms must be completed and reviewed and reports created notwithstanding the reportable contribution level. While a cost estimate has not been made for this bill, the costs for SB 445 (2001, Burton) were estimated to be $84,000 in 2001/02 and $130,000 beginning in 2002/03 and annually thereafter.

REVENUE ESTIMATE

The Kopp Act provisions of this bill would not impact the state's revenues. The Appeals provision would have an unknown effect depending on the number of decisions appealed and the results of the court reviews.

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